

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHER DIVISION OF ILLINOIS
WESTERN DIVISION

SECRETS APPAREL & GIFTS, INC.,
an Illinois Corporation,

Plaintiff,

vs.

NO. 08 C 50122

CITY OF ROCKFORD, an Illinois
Municipality,

Defendant.

**MOTION FOR PRELIMINARY INJUNCTIVE RELIEF
AND DECLARATORY RELIEF**

NOW COMES Plaintiff, SECRETS APPAREL & GIFTS, INC., ("Secrets") and
Complaining of Defendant CITY OF ROCKFORD, an Illinois Municipality, ("ROCKFORD")
by its attorneys, and moves the Court to enter a temporary restraining order, and after hearing, a
preliminary injunction prohibiting Defendant from taking any actions to penalize Plaintiff for
alleged violations of the Rockford zoning ordinance, during the pendency of this case, and in
support thereof represents unto the Court as follows:

1. As alleged in the verified complaint herein, Defendant City of Rockford's zoning ordinance, enacted on March 24, 2008, is a prior restraint on free speech, is vague and overbroad, fails to serve a substantial or significant governmental interest and is not narrowly tailored to serve any such interest.
2. On or about May 20, 2008, plaintiff was handed a letter issued by Darrius Morrow, Land Use Planner of the City of Rockford, a copy of which is attached to the Complaint as

Exhibit "A". The letter states that plaintiff must discontinue its business until it complies with the ordinance.

3. As alleged in the complaint, the letter alleges that plaintiff has violated portions of the ordinance.
4. On June 6, 2008, plaintiff filed its complaint for preliminary injunction, asking the court to enjoin plaintiff from enforcing the ordinance's terms and to declare the ordinance unconstitutional.
5. On June 10, 2008, defendant issued a Summons and Notice of Violation to plaintiff for failing to comply with the ordinance and for failing to close its business. (A copy of that Summons and Notice is attached hereto as Exhibit I.) An administrative hearing on that matter is scheduled for July 23, 2008.
6. Until this court determines whether the ordinance is constitutional, defendant should not be subject to any penalties for allegedly violating the ordinance.
7. Defendant's action to enforce an unconstitutional ordinance and to order plaintiff to close its business constitutes irreparable harm.
8. Rockford's amended ordinance is unconstitutional for reasons set forth in the Complaint herein.
9. The notice of violation was issued for the purposes of suppressing speech protected by the First Amendment and in retaliation for Plaintiff's exercise of its rights under the First and Fourteenth Amendments in filing this suit.

10. A business featuring material protected by the First Amendment should remain open without interference by governmental officials during the pendency of court proceedings to test the validity of ordinances such as that involved in this case.
11. The harm to Plaintiff will be irreparable if Rockford is allowed to close down its business.
12. There will be no harm to Rockford if Plaintiff is allowed to operate its business pending the decision in this case is, at most, unidentifiable.

WHEREFORE, Plaintiff Secrets Apparel and Gifts Incorporated prays that the Court enjoin the conduct complained in the Complaint herein during the pendency of this case, and enter its preliminary injunction forbidding the City of Rockford from interfering with the operations of Plaintiff's business or attempting to enforce its zoning ordinance against it during the pendency of this case.

S/WAYNE B. GIAMPIETRO
WAYNE B. GIAMPIETRO
One of Plaintiff's Attorneys

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CITY OF ROCKFORD
BUILDING DEPARTMENT
425 E. STATE STREET
ROCKFORD, IL 61104

CODE HEARING DIVISION

IN RE HEARING FOR VIOLATION(S)
OF THE CITY OF ROCKFORD CODE
OF ORDINANCES
ISSUED TO:
DEREK FADDEN

RESPONDENT

DOCKET NO.: 08-CHD-125z

FOR PROPERTY LOCATED AT:
280 N. Phelps Avenue
ROCKFORD, IL

SUMMONS

YOU ARE HEREBY NOTIFIED AND COMMANDED TO APPEAR at City Council Chambers, 2nd Floor, City Hall, 425 E. State Street, Rockford, IL, for an administrative hearing for City of Rockford Code violation(s) at the property cited above on July 23, 2008 at 1:30 p.m.

Please note that at the hearing you may represent yourself, bring an attorney or designate in writing someone to appear on your behalf. You may also produce witnesses and introduce evidence. Your failure to appear, or your representative's failure to appear will result in an order of default.

BY ORDER OF
THE CITY OF ROCKFORD BUILDING DEPARTMENT

BONNIE B. HENRY, DIRECTOR

If you are sending an agent in your place you must provide written and notarized authorization from for said agent to appear on your behalf. Please fax said authorization at least 24 hours prior to the hearing to Gina at 888-615-8646, or send said authorization with your agent on the hearing date.



CITY OF ROCKFORD

NOTICE OF VIOLATION

Building Department,
Fire Department,
Zoning Office
425 E. State Street
Rockford, IL 61104

For Property Located At:

280 N. Phelps Avenue

Tax Code No. 12-21-453-002

Inspection Date & Time:

May 28, 2008 at 3:40 P.M.

Date of Notice:

6/10/08

TO: Derek Fadden
280 North Phelps Avenue
Rockford, IL 61108

PLEASE BE ADVISED THAT THE ABOVE LOCATION WAS NOTED TO HAVE THE FOLLOWING VIOLATION(S):

Violation Type (Building, Fire, Electrical, Mechanical, Plumbing, Zoning)	Nature (Description) of Violation	Code Section Number	Inspector
<u>Zoning</u>	<u>sexually-oriented businesses must be in compliance with performance and development standards</u>	<u>40-001</u>	<u>AM1</u>
<u>Zoning</u>	<u>sexually-oriented businesses must be in compliance with performance and development standards</u>	<u>40-002 (b)</u>	<u>AM1</u>
<u>Zoning</u>	<u>No certificate of Zoning Compliance</u>	<u>60-001(F)</u>	<u>AM1</u>

Further Information (Include any witnesses to violation):

By: _____

FOR CODE HEARING DIVISION USE

Docket No. 08CH01357

Hearing Date & Time 7/23/08 at 1:30 P.M.

AN ADMINISTRATIVE HEARING WILL BE HELD AT THE ABOVE DATE AND TIME FOR THE ABOVE VIOLATION(S). CODE HEARINGS ARE HELD IN THE CITY COUNCIL CHAMBERS, 2ND FLOOR, CITY HALL, 425 E. STATE ST., ROCKFORD, IL. SEE YOUR SUMMONS FOR FURTHER INFORMATION.

IF AT THE CONCLUSION OF THE HEARING THE HEARING OFFICER DETERMINES THAT A CODE VIOLATION EXISTS, THE HEARING OFFICER MAY ISSUE AN ORDER TO CORRECT THE VIOLATION, AND IMPOSE A FINE. FOR GOOD CAUSE SHOWN, THE HEARING OFFICER MAY GRANT A CONTINUANCE IN ORDER TO GIVE THE OWNER TIME TO CORRECT THE VIOLATION.

THE LAW PROVIDES THAT VIOLATIONS MAY BE PUNISHABLE BY A FINE OF UP TO FIVE HUNDRED DOLLARS (\$500.00) A DAY FOR EACH DAY THAT A VIOLATION EXISTS.

FAILURE TO APPEAR AT THE HEARING MAY RESULT IN A DETERMINATION OF DEFAULT AND THE IMPOSITION OF AN ORDER OF COMPLIANCE AND FINES AGAINST YOU.

NO FINE WILL BE IMPOSED IF YOU CAN PROVE OR YOU CORRECTED THE VIOLATION BEFORE THE HEARING DATE. YOU MUST CALL THE BUILDING DEPARTMENT AT 987-5550 OR THE ZONING OFFICE AT 987-5585 AT LEAST FIVE (5) WORKING DAYS BEFORE YOUR HEARING TO REQUEST A REINSPECTION TO VERIFY THE CORRECTION.